U. S. Department of Housing and Urban Development

Office of Public and Indian Housing

Special Attention of:	NOTICE PIH 99-28 (HA)
Housing Agencies; Tribally Designated Housing Entities (TDHEs); Resident Management Corporations (RMCs); Resident Councils (RCs); Community Builders; Public Housing Directors; Program Center Coordinators; Administrators, Offices of Native American Programs	Issued: July 15, 1999 Expires: July 31, 2000

Subject: Guidance on definition of "public charge" in immigration laws; questions and answers (Q&As) about "public charge"

The Department of Justice (DOJ) published in the *Federal Register* on May 26, 1999 (64 FR 28676) a proposed rule that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable, on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same *Federal Register* (64 FR 28689), and the Department of State (DOS) has issued a cable to all embassies, implementing immediately the policy set forth in the proposed rule.

There has been some confusion among immigrant families, and service and benefit providers, regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The proposed rule, along with the INS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

With regard to the Department of Housing of Housing and Urban Development (HUD), the effect of the proposed rule and the INS guidance is to provide that an otherwise eligible noncitizen can receive benefits/services under HUD's programs and such receipt will not be considered by immigration officials as part of a public charge determination.

The DOJ proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General Assistance" but which may exist under other names). The sole exception to the focus on cash assistance is an instance in which Medicaid or a related program would meet this definition by paying for the cost of a person's institutionalization for long-term care. The proposed rule and Guidance clarify that receipt of cash welfare assistance (SSI, TANF, or State/local equivalents) cannot automatically result in a public charge inadmissibility determination. The INS and DOS officers must still apply a "totality of the circumstances" test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education, and skills.

The INS also advises the following . First, deportations on public charge grounds are rare and are expected to remain so. Second, an alien's mere receipt of public cash assistance for income maintenance will not make him or her deportable as a public charge. Finally, the INS guidance reiterates other long standing legal requirements that must also be met before a public charge deportation can occur.

HUD's programs are not listed above, and are not identified in the proposed rule or the INS guidance as providing a cash benefit for income maintenance purposes. Accordingly, receipt of benefits/services under HUD's programs will not be considered by immigration officials as part of a public charge determination.

Because this policy area is complicated, we encourage grantees, and State and local agencies, to become familiar with the proposed rule and Field Guidance published in the *Federal Register*. Written comments on the DOJ proposed rule must be submitted to the INS on or before July 26, 1999. We are also attaching a short summary of the new policy and set of frequently asked questions and answers, prepared by the INS, to help grantees, and State and local agencies, better understand the details of these news public charge policies and which noncitizens may be affected.

If you need further clarification, please contact: Patricia Arnaudo at (202) 708-0744, extension 4250.

/s/ Deborah Vincent for
Harold Lucas, Assistant Secretary
for Public and Indian Housing

Attachments

- "Miscellaneous" section:
  http://www.ins.usdoj.gov/public_affairs/news_releases/index.html

- (1) INS Fact Sheet:
  http://www.ins.usdoj.gov/public_affairs/news_releases/public_cfs.htm

- (2) INS Fact Sheet in Spanish translation:
  http://www.ins.usdoj.gov/public_affairs/news_releases/pcharge_sp1.htm

- (3) INS Q&As:
  http://www.ins.usdoj.gov/public_affairs/news_releases/public_cqa.htm

- (4) INS Q&As in Spanish translation:
  http://www.ins.usdoj.gov/public_affairs/news_releases/pcharge_sp3.htm